

## SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE is made and entered into as of the 31<sup>st</sup> day of January, 2014 by and between **THE TOWN OF CHAPEL HILL**, a North Carolina municipal corporation organized and existing under the laws of the State of North Carolina (the "Town"), and **RAM DEVELOPMENT COMPANY**, a Florida corporation, and **140 WEST FRANKLIN LLC**, a North Carolina limited liability company, (collectively, "RAM"), sometimes referred to as "Parties" or a "Party."

WHEREAS, the Town and RAM entered into that certain General Development Agreement Between the Town of Chapel Hill and RAM Development Company dated February 12, 2007, as amended pursuant to that certain First Amendment to General Development Agreement dated April 3, 2007, as further amended by that certain Second Amendment to General Development Agreement dated September 6, 2007, as further amended by that certain Third Amendment to and Assignment of General Development Agreement dated January 13, 2009, as further amended by that certain Fourth Amendment to General Development Agreement dated July 31, 2013 (the "Development Agreement");

WHEREAS, the Town and RAM further entered into that certain Ground Lease dated February 17, 2011 (the "Lease");

WHEREAS, the Development Agreement and the Lease contemplated the construction by RAM of a multi-use real estate development project including residential units, retail and office spaces, and a structured parking facility on a 1.73 acre tract of land with frontage on West Franklin Street, Church Street, and Rosemary Street in Chapel Hill, North Carolina ("Lot 5"), which such land was owned by the Town;

WHEREAS, during construction activities commencing in 2011, RAM encountered soil at, on, and beneath Lot 5 containing petroleum substances, solvents, and other hazardous substances ("Contaminated Soil") and also encountered water, groundwater, and stormwater at, on, beneath, and migrating onto Lot 5 containing petroleum substances, solvents, and other hazardous substances ("Contaminated Water");

WHEREAS, RAM excavated, removed, and disposed of the Contaminated Soil from Lot 5 during construction activities;

WHEREAS, RAM collected, removed, and disposed of Contaminated Water from Lot 5 during construction activities;

WHEREAS, Contaminated Water and Contaminated Soil are or may still be present at Lot 5 and may exist at Lot 5 in the future;

WHEREAS, as part of its construction project, RAM constructed a system to collect, treat, and dispose of Contaminated Water present at or migrating onto Lot 5, and RAM conducts such collection, treatment, and disposal of Contaminated Water on an on-going basis as is

required by, and is pursuant to a permit issued by the North Carolina Department of Environment and Natural Resources;

WHEREAS, RAM claims that the Town is liable and responsible for all costs associated with RAM's collection, removal, transportation, treatment, and disposal of Contaminated Water during construction activities and is liable and responsible for all costs associated with collection, treatment, and disposal of Contaminated Water at Lot 5 on a going-forward basis; the Town denies such claims by RAM, and the Town may have counterclaims and rights of set-off associated with RAM's claims;

WHEREAS, RAM and the Town desire to avoid litigation related to such claims, counterclaims, and rights of set-off and desire to compromise and settle the disputes between them as set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises set forth in this Agreement, and for other good and valuable consideration, the receipt, adequacy and sufficiency of which the Parties acknowledge, the Parties agree as follows:

1. Payment to RAM. Within forty-five (45) days of execution of this Agreement, the Town will pay the amount of One Hundred Seventy Thousand Dollars (\$170,000.00) to RAM by delivering funds by check, electronic wire transfer, or other means in that amount to McGuireWoods LLP, as counsel for and in trust for RAM.

2. Releases.

(a) RAM, for itself and its heirs, successors, shareholders, affiliates and assigns, and anyone claiming by or through RAM, hereby releases and forever discharges the Town and its departments, divisions, and subdivisions, together with past, present, and future employees, agents, representatives, insurers, and attorneys, and successors and assigns of each of them from any and all rights, claims, demands, allegations, liabilities (contingent or otherwise), judgments, damages, fees, penalties, fines, actions, causes of action, whether known or unknown, now existing or which may arise or be asserted at some future time (including claims for contribution, indemnity, reimbursement, or otherwise based on claims asserted by third parties), and which refer or relate in whole or in part to: (i) Contaminated Water; or (ii) Contaminated Soil; or (iii) the presence of hazardous substances at, on, or beneath Lot 5; or (iv) any obligation of the Town pursuant to or based on Paragraph 3.5 of the Development Agreement (such paragraph being titled "Town's Obligation to Remediate"). The release by RAM contained in this subparagraph does not include a release of any claims to enforce the provisions of this Agreement or any claims related to any contamination of Lot 5 first caused by the Town after the date of this Agreement.

(b) The Town for itself and its heirs, successors, departments, divisions, and subdivisions, and anyone claiming by or through the Town, hereby releases and forever discharges RAM, and its successors, shareholders, assigns, affiliates, agents, members, managers, insurers, employees, officers, directors, attorneys, from any and all rights, claims, demands, allegations, liabilities (contingent or otherwise imposed), judgments, damages, fees, penalties, fines, actions, causes of action, whether known or unknown, now existing or which

may arise or be asserted at some future time (including, to the extent allowed by law, claims for contribution, indemnity, reimbursement, or otherwise based on claims asserted by third parties), and which refer or relate in whole or in part to: (i) Contaminated Water; or (ii) Contaminated Soil. The release by the Town contained in this subparagraph does not include a release of any claims to enforce the provisions of this Agreement or any claims related to any contamination of Lot 5 first caused by RAM after the date of this Agreement.

3. Fifth Amendment to Development Agreement. Upon execution of this Agreement, the Parties will execute that certain Fifth Amendment to General Development Agreement, the form of which is attached hereto as Exhibit A.

4. Effect on Agreements Between the Town and RAM. Except as provided herein, this Agreement does not impact, limit, or affect in any way the legal rights or obligations of the Parties related to the Development Agreement, the Lease, and other agreements or contracts between or among the Parties.

5. Future Handling, Treatment, and Disposal of Contaminated Water. From the date of this Agreement, RAM shall collect, handle, treat, and dispose of Contaminated Water at, beneath, or from Lot 5, and shall comply in all respects with applicable legal requirements in so doing.

6. Future Third Party Claims Related to Contaminated Water. RAM shall indemnify, defend and hold harmless the Town, and its departments, divisions, and subdivisions, together with the past, present, and future employees, agents, representatives, insurers, and attorneys, and successors and assigns from and against any rights, claims, demands, allegations, liabilities (contingent or otherwise imposed), judgments, damages, fees, penalties, fines, actions, causes of action, costs, or expenses that are: (i) asserted, alleged, or sought by persons or entities not a party to this Agreement; and (ii) related to Contaminated Water at, on, beneath, or from Lot 5 (including RAM's handling, treatment, and disposal of Contaminated Water pursuant to Paragraph 5 of this Agreement); and (iii) asserted, alleged, or sought after the date of this Agreement.

7. Representations and Warranties. The Parties make the following representations and warranties to each other:

(a) Each Party warrants and represents that this Agreement has been duly executed and delivered by that Party;

(b) Each Party warrants and represents that the terms of this Agreement are contractual, and are the result of negotiation between the Parties;

(c) Each Party warrants and represents that this Agreement has been carefully read by that Party, that the contents hereof are known to and understood by that Party, and that this Agreement is signed freely by each Party, after the opportunity for consultation and advice from legal counsel of each Party's own choosing;

(d) Each Party represents and acknowledges that it has participated in the preparation and drafting of this Agreement and has each given its approval to all of the language

contained in this Agreement, and it is expressly agreed and acknowledged that if any Party later claims that there is an ambiguity in the language of this Agreement, there shall be no presumption that such ambiguity be construed for or against any Party hereto; and

(e) Each Party warrants and represents that said Party has not assigned, transferred, or conveyed in any manner any claims or rights released by this Agreement.

8. Settlement. Nothing contained in this Agreement shall be construed as an admission by any Party of liability of any kind to any other Party. All such liability is expressly denied.

9. Integration. This Agreement constitutes a single integrated contract expressing the entire agreement of the Parties relative to the matters referenced herein. All prior discussions, negotiations, and agreements concerning said matters are merged and integrated into this Agreement.

10. Choice of Law and Forum. This Agreement shall be governed by and interpreted in accordance with the laws of the State of North Carolina as they are applied to contracts made and to be wholly performed in this State, without regard to any choice of law rules to the contrary.

11. No Oral Modification. This Agreement represents the entire agreement of the Parties and may not be amended orally.


12. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which when taken together shall constitute one instrument.

13. Non-Waiver. The waiver of any breach of this Agreement shall not be construed as a waiver of any subsequent breach.

WHEREFORE, the Parties have executed this Agreement as of the date first above written.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

**THE TOWN OF CHAPEL HILL,**  
a North Carolina municipal corporation

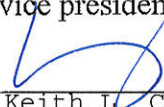
By:   
Name: Roger L Stancil  
Title: Town Manager RDK

**RAM DEVELOPMENT COMPANY,**  
a Florida corporation

By:   
Name: Keith L Cummings  
Title: President 1/24/14

**140 WEST FRANKLIN LLC,**  
a North Carolina limited liability company

By: Ram Realty Associates II, LLC, a Delaware limited liability company, its authorized general partner [signature by one Manager or two vice presidents]

By:   
Print Name: Keith L Cummings  
Title: Manager 1/24/14

By: n/a  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_



## **EXHIBIT A**

### **FIFTH AMENDMENT TO GENERAL DEVELOPMENT AGREEMENT**

THIS FIFTH AMENDMENT TO GENERAL DEVELOPMENT AGREEMENT (this "Amendment") is entered into this the \_\_\_\_\_ day of January 2014, by and between The Town of Chapel Hill, a municipal corporation organized and existing under the laws of North Carolina (hereinafter referred to as "Town"); Ram Development Company, a Florida corporation (hereinafter referred to as "Ram") and 140 West Franklin LLC, a North Carolina limited liability company (hereinafter referred to as "140 West Franklin").

#### **WITNESSETH:**

WHEREAS, the Town and Ram entered into that certain General Development Agreement dated February 12, 2007, as amended pursuant to that certain First Amendment to General Development Agreement dated April 3, 2007, and as further amended by that certain Second Amendment to General Development Agreement dated September 6, 2007, as further amended by that certain Third Amendment to and Assignment of General Development Agreement dated January 13, 2009, and as further amended by that certain Fourth Amendment to General Development Agreement dated July 31, 2013 (collectively, the "Development Agreement") regarding the proposed development of a parking garage, public space and mixed-use retail and residential building on property owned by the Town, commonly known as Lot 5;

WHEREAS, capitalized terms used in this Amendment not expressly defined herein shall have the meaning ascribed to such terms in the Development Agreement;

WHEREAS, the parties to this Amendment have resolved certain disputes and settled claims between them pursuant to that certain Settlement Agreement and Release executed and effective at the same time as this Amendment;

WHEREAS, pursuant to such Settlement Agreement and Release, the parties to this Amendment desire to amend the terms and provisions of the Development Agreement to delete Paragraph 3.5 of the Development Agreement titled "Town's Obligation to Remediate" and associated references.

NOW, THEREFORE, in consideration of their mutual promises, covenants and agreements contained in this Amendment and in the Settlement Agreement and Release, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

A. The following provisions of the Development Agreement are hereby deleted from the Development Agreement and are from this date forth null, void, and without legal effect:

1. The entirety of Paragraph 3.5 of such paragraph being titled "Town's Obligation to Remediate";

2. Subparagraph 2.12(b)(iii) of Paragraph 2.12, which such subparagraph states "(iii) any Claims relating to or arising out of the presence of Hazardous Substances on

Lot 5 or violation of any Environmental Laws as of the Closing or arising out of the failure of the Town to remediate the same as herein provided.”

B. The Town acknowledges and agrees that the obligations of the Guarantor pursuant to that certain Guaranty Agreement dated February 12, 2007 executed by Keith L. “Casey” Cummings in favor of the Town, which Guaranty Agreement was required by Section 3.4(c) of the General Development Agreement, are hereby discharged and released.

C. Except as amended hereby all the terms and provisions of the Development Agreement are hereby reaffirmed and remain in full force and effect. In the event that there is a conflict between the terms and provisions of the Development Agreement and the terms and provisions of this Amendment the terms and provisions of this Amendment shall control.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date and year first set forth above.

**TOWN OF CHAPEL HILL**

[TOWN SEAL]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Town Manager

ATTEST

\_\_\_\_\_  
Town Clerk

This instrument has been pre-audited in the manner required by the “Local Government Budget and Fiscal Control Act.”

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Finance Director

[Signatures continue on following page]

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date and year first set forth above.

**RAM DEVELOPMENT COMPANY,**  
a Florida corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**140 WEST FRANKLIN LLC,**  
a North Carolina limited liability company

By: Ram Realty Associates II, LLC, a Delaware limited liability company, its authorized general partner [signature by one Manager or two vice presidents]

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

The undersigned, being Guarantor under that certain Guaranty Agreement dated February 12, 2007 ("Guaranty"), which was delivered in connection with the Development Agreement, hereby consents to this Third Amendment and all amendments prior thereto, and acknowledges his continuing liability under the Guaranty, notwithstanding the assignment contained herein.

KEITH L. ("CASEY") CUMMINGS

\_\_\_\_\_